HIGH COURT OF UTTARANCHAL AT NAINITAL.

Judgment Reserved

Writ Petition no. 1078 (S/S) 2005

Mahipal Singh S/o late Sri Govind Singh,
R/o village Kaleti, P.O. Gurburani,
Tehsil Didihat, District Pithoragarh. ----Petitioner.

Vs.

1. State of Uttaranchal through Principal Secretary,
   Forest Department, Govt. of Uttaranchal, Dehradun,
2. Principle Chief Conservator of Forest,
   Uttaranchal Nainital,
   Camp at 87 Rajpur Road, Dehradun,
3. Chief Conservator of Forest,
   Kumaon Region Nainital, Uttaranchal,
4. Divisional Forest Officer, Pithoragarh,
   Forest Division, Pithoragarh, ----Respondents.

Sri H.C. Bisht, learned counsel for the petitioner.
Learned Standing Counsel for respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri H.C. Bisht, learned counsel for the petitioner and learned Standing Counsel for the State/respondents.

By means of this writ petition, the petitioner has prayed to issue a writ in the nature of mandamus commanding the respondents to give appointment to the petitioner on compassionate ground under Dying-in-Harness Rules.

The facts, in brief, are that the petitioner's father Late Sri Govind Sing Karki while working as 'Shrimik' in Berinag Forest Range, Pithoragarh died all of a sudden on 07.09.2003 leaving behind the family comprising of seven members. At the time of his death, he had a continuous service of about 23 years right from 01.10.1980 to 07.09.2003 and was getting monthly salary from the Office of Ranger, Forest Department, Berinag, District Pithoragarh. The father of the petitioner was the sole bread earner for the family comprising of petitioner, petitioner's brothers, mother of the petitioner and the aged grand-mother of the petitioner.

After the death of the petitioner's father, the bereaved family having had no means of subsistence of make both ends meet. The mother of the petitioner on 12.12.2003 submitted a representation to the respondents through Forest Ranger, Berinag for appointment of the petitioner on compassionate ground. The said representation was duly forwarded by the Forest Ranger to the higher authorities. Another representation was mad on 01.01.2004 addressed to Chief Conservator of Forest, which is annexure no. 4 to the writ petition.

The petitioner's father had served the Department for 23 years and after his death, the respondents even didn't care to reply the representation made by the petitioner, accordingly another representation was made by the mother of the petitioner addressed to the Minister of the Forest on 01.07.2004 who, in turn, asked the Principal Chief Conservator of Forest to provide appointment to the petitioner under Dying-in-Harness Rules. The Principal Chief Conservator of Forest on 12.01.2005 sent the representation of the petitioner's mother to the Divisional Forest Officer, Pithoragarh for taking needful action, however the Divisional Forest Officer took no action and the petitioner was compelled to file the present writ petition.

The respondents have filed counter affidavit. In the counter affidavit, the stand taken by the respondents is that the petitioner is not entitled to get benefit under Dying-in-Harness Rules 1974 because the pre condition for applying under Dying-in-Harness Rules 1974 stipulates that the deceased employee should be a Govt. Servant. According to the respondents, late Sri Govind Singh Karki was engaged in the Forest Department as Daily Wager and his services were not regularized till the date of his death and he did not have the status of Govt. Servant on the date of his death, consequently he is not entitled for appointment under Dying-in-Harness Rules. It is further stated

in the counter affidavit that Sri Govind Singh Karki was expired on 07.09.2003, his name was also sent to the Regularisation Committee for regularisation and before he could be considered by the Committee and before any appointment could be given to him he expired. As such, the Provisions of Dying-in-Harness Rules 1974 are not attracted in the present case.

It is not disputed in the counter affidavit that the father of the petitioner was entitled to be regularized under the scheme prepared by the Forest Department in pursuance of the judgment of Hon'ble the Supreme Court in State of U.P. vs. Putti Lal and ors. It is also not disputed that the similarly situated persons have been regularised and the case of the petitioner's father was also under process for his regularisation at the time of his death. It is also not disputed that the petitioner's father had served the Department for 23 years as 'Shrimik' and he was getting monthly salary of Rs. 2500/- from the Department till his death.

Learned counsel for the petitioner has submitted that Uttaranchal Forest Department Regularisation (On Group D Posts) Of Daily Wages Appointment Rules 2003 came into force w.e.f. 19th February 2003. Rule-4 of the aforesaid Rule provides Regularisation of Daily Wage Appointments on Group D Posts. Since the Rules were came into force on 19th February 2003 and the petitioner's father died on 07.09.2003, much after the Rules came into force, and further since the juniors to the petitioner's father have been regularized, however the petitioner's father could not be regularized as the matter was under process when he was expired, it will be deemed that he was regularidsed with the Department and the submission made by the respondents that the deceased was not a Govt. Servant as he was not regularised till the date of his death has no substance.

Learned counsel for the petitioner has submitted that if a Daily Wager has served the Department for a long period, after the death of such employee his dependant is entitled for service under Dying-in-Harness Rules. It is not disputed that the petitioner's father had served the Department for 23 years and the regularization of petitioner's father was under process under the Regularisation Rules at the time of his death. The person engaged alongwith the petitioner's father and even the juniors to him have been regulrised under the Rules because of inaction on the part of the Department that though the Rules were came into force on 19th February 2003, the petitioner's father who was entitled to be regularized under these Rules could not be provided appointment on regular basis even after 7 months of commencement of the Rules.

For the reasons recorded above, the writ petition is allowed. The respondent/Divisional Forest Officer, Pithoragarh is directed to consider the case of the petitioner for providing him appointment on compassionate grounds under Dying-in-Harness Rules 1974. No order as to costs.

(M.M. Ghildiyal, J.)

February 14, 2006:
NCM: